

## University of Groningen

### Towards Transparency in Land Ownership

Pierce, Caitlin; Tagliarino, Nicholas Korte; MacInnes, Megan; Daniel, Poppea; Jaitner, Annette

**IMPORTANT NOTE:** You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

#### *Document Version*

Publisher's PDF, also known as Version of record

#### *Publication date:*

2018

[Link to publication in University of Groningen/UMCG research database](#)

#### *Citation for published version (APA):*

Pierce, C., Tagliarino, N. K., MacInnes, M., Daniel, P., & Jaitner, A. (2018). *Towards Transparency in Land Ownership: A Framework For Research on Beneficial Land Ownership*. Transparency International.  
[https://www.transparency.org/whatwedo/publication/towards\\_transparency\\_in\\_land\\_ownership\\_a\\_framework\\_for\\_research](https://www.transparency.org/whatwedo/publication/towards_transparency_in_land_ownership_a_framework_for_research)

#### **Copyright**

Other than for strictly personal use, it is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), unless the work is under an open content license (like Creative Commons).

The publication may also be distributed here under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license. More information can be found on the University of Groningen website: <https://www.rug.nl/library/open-access/self-archiving-pure/taverne-amendment>.

#### **Take-down policy**

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

*Downloaded from the University of Groningen/UMCG research database (Pure): <http://www.rug.nl/research/portal>. For technical reasons the number of authors shown on this cover page is limited to 10 maximum.*



# TOWARDS TRANSPARENCY IN LAND OWNERSHIP

---

A framework for research on  
beneficial land ownership

**Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.**

**[www.transparency.org](http://www.transparency.org)**



**IALTA**  
International Alliance  
on Land Tenure and  
Administration

**trōcaire**

**INTERNATIONAL  
LAND  
COALITION**

---

Authors: Caitlin J. Pierce, Nick Tagliarino, Megan MacInnes,  
Poppea Daniel, Annette Jaitner

© Cover photo: Istock/CasarsaGuru

Design: Kerstin Deinert

ISBN: 978-3-96076-090-0

2018 Transparency International. Except where otherwise noted, this work is licensed under CC BY-ND 4.0 DE. Quotation permitted. Please contact Transparency International – [copyrights@transparency.org](mailto:copyrights@transparency.org) – regarding derivatives requests.



Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as at April 2018. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

# CONTENTS

<b>ACKNOWLEDGEMENTS</b>	<b>4</b>
<b>KEY TERMS</b>	<b>5</b>
<b>EXECUTIVE SUMMARY</b>	<b>6</b>
<b>INTRODUCTION</b>	<b>7</b>
<b>DEVELOPING THE RESEARCH FRAMEWORK</b>	<b>9</b>
<b>TESTING THE RESEARCH FRAMEWORK IN SIERRA LEONE</b>	<b>12</b>
Recommendations to improve transparency in Sierra Leone	18
<b>TESTING THE RESEARCH FRAMEWORK IN SCOTLAND</b>	<b>19</b>
Recommendations to improve transparency in Scotland	25
<b>FEEDBACK AND SUGGESTIONS FOR IMPROVING THE RESEARCH FRAMEWORK</b>	<b>26</b>
<b>CONCLUDING REMARKS</b>	<b>27</b>
<b>ANNEXES</b>	<b>28</b>
<b>BIBLIOGRAPHY</b>	<b>38</b>



# ACKNOWLEDGEMENTS

Transparency International and the authors would like to thank the experts who generously provided their time and insights to improve this research framework and analysis for the country case studies. Special thanks go to Marion Aberle from Deutsche Welthungerhilfe, Muireann Kirrane and Michael Solis from Trócaire, Calum Macleod and Peter Peacock from Community Land Scotland, Leon Verstappen from IALTA, and Coralie Pring, Maira Martini, Samuel Kaninda, Edward Koroma and Julius Hinks from Transparency International. We would also like to thank the International Land Coalition, who provided financial support for this research. Annette Jaitner was the overall lead of this initiative; Caitlin Pierce was the lead researcher on developing the methodology; Nick Tagliarino was the lead author for the Sierra Leone country study; Poppea Daniel was the lead author for the Scotland country study; Megan MacInnes from Global Witness contributed relevant advice, input and feedback throughout.





# KEY TERMS

## **BENEFICIAL OWNER/PERSON OF SIGNIFICANT CONTROL**

The natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates. The term is used to underscore the contrast with the legal or nominee company owners and with trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits.

## **CONTROLLING**

An entity “controls” land if they are able to exercise authority through use, management and/or exclusion rights over land, but they do not have all rights required under the “ownership” designation – the right to exclude, to due process and compensation, to sell or transfer to another entity, and to retain rights for an unlimited duration.

## **LEGAL ARRANGEMENTS**

An express trust or other similar arrangements.

## **LEGAL ENTITY**

Any entity other than a natural person that has the legal capacity to enter into agreements or contracts, assume obligations or own property, among other things. This can include companies, bodies corporate, foundations, partnerships, or associations and other similar relevant entities.

## **LAND TENURE**

Includes all types of legal relations to land that could be described as land ownership and land use rights.

## **LAND USE RIGHTS**

A land use right is distinct and separate from land ownership. A land use right is a property right enjoyed by private parties or communities. It is enforceable. However, compared with ownership, user rights are considered more limited and subordinate.

## **NATURAL PERSON**

An individual human being, as opposed to a legal person, which may be a private (for example, a legal entity or non-governmental organisation) or public (for example, government) organisation.

## **OWNERSHIP**

An entity “owns” land if their tenure is unlimited in duration; they have a legal right to exclude outsiders from using their resources (within limits); and they are entitled to due process and compensation in the face of potential extinguishment by the state of some or all of their rights.

## **STEWARDSHIP**

Refers to responsible use and protection of land through sustainable practices.

# EXECUTIVE SUMMARY

In many countries, unidentified private individuals and legal entities obtain significant economic benefits from land. This lack of transparency can make it harder for affected communities and governments to hold them accountable for land use decision-making and any sort of violation they commit. It can also leave investors open to risk if they do not know who is truly behind a company they are doing business with.

Building on a methodology used to investigate beneficial ownership of legal entities for the purposes of fighting tax evasion, money laundering and corruption<sup>1</sup>, this paper proposes a research framework for assessing a country's regulation of beneficial ownership in large-scale land holdings.<sup>2</sup> In order for affected communities and governments to hold landowners responsible for their decision-making, a legal and policy architecture must be in place which compels and enforces systematic disclosure of relevant information, and in which either a public or a specific, known government entity has access to all relevant information to connect beneficial owners with specific land holdings.

## THE PROPOSED BENEFICIAL LANDOWNERSHIP RESEARCH FRAMEWORK CAN BE USED TO:

1. Assess national legal and policy frameworks around land registries
2. Assess national legal and policy frameworks around registries for legal entities or arrangements
3. Assess the extent to which these laws and policies are implemented
4. Identify barriers to public access to information about land ownership and beneficial ownership
5. Identify who within government may have access to information about beneficial land ownership, if it is not available to the public

The research framework was tested using a field-based approach in Scotland and a desk-based study in Sierra Leone in order to assess how well the research framework functions in practice, as well as to provide insights into these two countries. Though both countries are influenced by the British legal system, Scotland and Sierra Leone have otherwise quite different political, cultural and geographic contexts. The application of this research framework highlighted that while Sierra Leone does not have even a national land registry or complete land registries at any other administrative level, Scotland has a progressive central land registry and primary legislation that makes provision for the disclosure of beneficial owners of land. Despite these differences in law and policy, both countries have barriers to public access to information that is collected, underscoring the need for further reform if the public is to play a role in ensuring accountability of land use and beneficial ownership.

The research framework set forth in this paper may be useful to civil society advocates and academic researchers. The results can provide a basis for recommendations to lawmakers and policymakers to improve their country's legal framework or its implementation. Investors who are concerned about social and reputational risk may also find this research framework a helpful tool to ascertain how much risk a land-related investment in a specific country may pose. Additionally, case studies that can be produced with the research framework examining the links between transparency and accountable stewardship can help build a global movement for transparency of beneficial land ownership.

<sup>1</sup> Transparency International, G20 Leaders or Laggards? (Transparency International 2017).

<sup>2</sup> There is no universal definition of what constitutes a "large-scale land holding," as the relative availability of land in a specific context will affect any numeric threshold. However, the Land Matrix ([www.landmatrix.org/en/about/](http://www.landmatrix.org/en/about/)) sets forth 200 hectares as the size of a land deal it considers "large". This framework uses 200 hectares as a rule of thumb so that the findings of this framework can be set in the context of other research materials and resources.

# INTRODUCTION

## Background

In the past five years, disclosure of beneficial ownership has increasingly been acknowledged as an essential part of fighting corruption, tax evasion and money laundering, and holding powerful entities to account. The publishing of the Panama Papers in 2016 brought these issues into the mainstream and built momentum for a spate of investigations and new legislation.<sup>3</sup> As several exposés by Transparency International, Global Witness and *The New York Times*<sup>4</sup> have revealed, in major cities around the world real estate is a prime parking ground for the assets of opaque legal entities, and this is contributing to the housing crisis and associated negative social impacts.

Yet the implications for beneficial ownership disclosure in the land sector go beyond urban real estate. In many countries, unidentified private individuals and legal entities retain significant economic benefits from land in the form of large-scale agriculture, forest and other land-based concessions.

Decision-making around large-scale land acquisitions and investments is frequently done in secrecy, without the knowledge or consent of communities who may be displaced or have their access to important resources curtailed because of the investment's activities. In some instances, these deals involve "state" or "public" land on which customary or traditional rights of individuals and communities may not be formally documented or recognised by the government. This can result in residential and economic displacement. In other instances, it is the activities of those who control large land holdings that impact communities, through pollution or blocking access to important community resources. Not knowing who ultimately controls and benefits from large land holdings can make it harder for affected communities or governments to hold legal entities accountable for management decisions or any sort of environmental or human rights violation they might commit.

Secrecy in any type of asset ownership can have negative implications for governance and accountability. It is particularly pernicious in land ownership. Three-quarters of people living in poverty reside in rural areas and depend on land-based livelihoods, and sound land management can provide environmental, community and cultural benefits in a multitude of ways. The unique connection between land and sovereignty is also recognised in many countries' investment laws, which aim to limit the rights of foreign individuals or entities to own and control land within their borders. The lack of transparency about beneficial ownership in land registries and land transfers limits governments' ability to enforce sovereignty principles.

International guidelines are starting to increasingly acknowledge the importance of data collection and data access in the land sector to promote transparency and accountability. The Open Government Partnership<sup>5</sup> includes land as a specific sector requiring attention and in 2013 provided guidance on improving land transparency, with a focus on making existing land tenure and land holding registries public and easily accessible.<sup>6</sup> *The Voluntary Guidelines on the Responsible Governance of Tenure of Land*,<sup>7</sup> Forests and Fisheries recommend a number of actions by states and non-state actors to improve transparency of land tenure, rights and ownership. These guidelines highlight the importance of land registries and include details on what registries should include, that data should be made publicly available, elements of a legal framework for disclosing spatial information, and consideration of integrating spatial data with other information systems.

<sup>3</sup> Transparency International, Panama Papers Anniversary – a year of change? (Transparency International 2017).

<sup>4</sup> Transparency International, Sao Paulo: Does Corruption Live Next Door? (Transparency International 2017).

<sup>5</sup> "Open Government Partnership, "How it works", [www.opengovpartnership.org/about/about-ogp/how-it-works](http://www.opengovpartnership.org/about/about-ogp/how-it-works)

<sup>6</sup> Available at [https://www.opengovpartnership.org/sites/default/files/open-gov-guide\\_summary\\_all-topics.pdf](https://www.opengovpartnership.org/sites/default/files/open-gov-guide_summary_all-topics.pdf)

<sup>7</sup> Food and Agriculture Organization, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Food and Agriculture Organization 2012).



Different stakeholders can benefit from increased disclosure of beneficial ownership information in the land sector. Beneficial ownership disclosure can help citizens understand how and with whom to participate in decision-making processes. It can also open up new grievance procedures and avenues of recourse. Evidence suggests that many large-scale land deals involve a complex network of multiple parties, in some instances spanning different legal and national jurisdictions.<sup>8</sup> Little is known about the actors and processes involved in securing these deals, but investigation of these investment chains can help to identify pressure points for effective public action to ensure that investments respond to local and national development agendas and promote inclusive sustainable development.

For governments, beneficial ownership disclosure sheds light on who is gaining control of land within their national borders. This helps governments protect sovereignty priorities and fight corruption. Finally, there is also an increasing need for companies to develop a risk-based approach to preventing involvement with corruption, and to ensure clean supply chains in their business activities. Not knowing who truly sits behind a legal entity you are doing business with can pose significant financial, reputational and legal risks. Beneficial ownership transparency can help decrease corruption and support companies interested in ethical investing.<sup>9</sup>

## Motivation for developing a beneficial land ownership research framework

“Follow the money” approaches can help civil society actors and other interested parties to zoom in on transparency and beneficial ownership networks related to a single project or investment. The research framework this paper proposes is complementary but different. The proposed research framework is designed to help civil society and policymakers examine the overall policy, legal

framework and associated implementation within a country, rather than at the project level. The findings of such a country-level assessment can help policymakers disaggregate areas of strength and weakness in the beneficial ownership and land registries and laws in their country, as well as examine issues related to implementation of sound policies.

The research framework focuses primarily on technical barriers to beneficial land ownership transparency. For example, it does not specifically focus on issues of political will, though the authors recognise that tackling these issues is equally important as addressing technical barriers. By using this research framework to identify technical barriers and strengths, civil society may find more space to engage in dialogue with government reformers.

## Structure of the paper

This paper is broken into four sections. Following this introduction, Section 2 presents an overview of the research framework (the full framework is given in Annex I). Section 3 provides a snapshot of the research framework being tested in Scotland and Sierra Leone. Feedback and ideas for further developing the research framework are presented in Section 4, followed by a brief conclusion in Section 5.

---

<sup>8</sup> Cotula, L. and Blackmore, E., Understanding agricultural investment chains: Lessons to improve governance, Rome and London (Food and Agriculture Organization and IIED 2014)

<sup>9</sup> BTeam, Putting Beneficial Ownership Transparency into Practice (Turkey: BTeam 2015).

# DEVELOPING THE RESEARCH FRAMEWORK

Developing the research framework was a collaborative effort, which drew on experts across land and resource rights, beneficial ownership and corruption, and specialists with different regional expertise from over five different organisations.

## The research framework

At the heart of assessing the transparency of beneficial ownership of land are five primary questions:

1. What information on land ownership and control is collected and how?
2. What information on land ownership and control is accessible and by whom?
3. What information on legal entity arrangements is collected and how?
4. What information on legal entity arrangements is accessible and by whom?
5. How do these systems connect to each other, if at all?

The majority of the research framework is organised into four sections (A – D) addressing the first four questions and the fifth question is interwoven into those four sections. Each section also considers how well any existing laws or policies are implemented in practice. A final section (E) of the research framework assesses the stewardship and use responsibilities that entities with land control may have. In practical terms, this final section would not be enforceable if robust land and beneficial ownership information is not collected and shared with those who can hold these actors accountable. The detailed research framework is given in Annex I, but is summarised here:

### Section A. Land registry structure and information collection

There is no one internationally agreed best practice for land registries. However, in the interest of transparency and collecting information which can be used to identify owners and hold them accountable, countries might have centralised land registries that contain information on the real beneficial owners (foreign and domestic) of all types of land. These registries might also include basic mapping coordinates and any specific limitations on use of the land in question. This section of the research framework examines the components of a land registry or land documents in a country.

### Section B. Access to information on land ownership and control, including long-term leases and concessions

For the purpose of enabling communities or governments to hold landowners accountable, countries might have land registries that are open to the general public without a fee; make them available online; and make them searchable by different criteria.

### Section C. Legal entity/arrangement registry and information collection

All legal entities (national and international) might need to provide information to the government on their beneficial owners; beneficial ownership information might need to be provided before land acquisition; third parties might have responsibilities for providing beneficial ownership information; and sanctions and incentives might be used to encourage disclosure.

## Section D. Access to legal entity/arrangement registry information

For the purpose of enabling communities or governments to hold beneficial owners accountable, countries might have land registries that are open to the general public without a fee; make them available online; and make them searchable by different criteria; or, at a minimum, they might ensure that law enforcement agents are able to access this information.

## Section E. Responsibilities of stewardship/use by entities with ownership or control

Actions that landowners are required/encouraged to undertake might be relevant to understanding stewardship. Ideally a country would have clear, legally enforced requirements for social and environmental stewardship by landowners. The second-best alternative would be to have national or international guidelines that are promoted by proactive incentives.

## Analysing and coding the results

After completing the full assessment of beneficial land ownership, the researchers highlighted stronger and weaker components of a country's legal framework and implementation for each section. Stronger components received a green rating and weak components received a red rating, with yellow being areas in need of improvement.

There is no one internationally agreed standard that addresses all components, and these ratings are subjective, based on the researcher's knowledge of a variety of standards (e.g. Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs), World Bank Land Governance Framework) and their own expertise. Other researchers might arrive at a different conclusion. However, such a coding can nonetheless be useful as a benchmarking exercise for policymakers and others to quickly see which areas of their policy and legal framework need improvements to promote increased transparency. It is a less useful exercise for comparing countries unless one specific external standard is used, and one researcher conducts the coding for, and has similar knowledge of, all of the countries considered.

The two country researchers who tested this research framework chose the following approaches to coding.

The Sierra Leone and Scotland country case studies used the following rubric:

- A green rating indicates a positive or progressive element.
- An amber rating indicates an element that is partially positive and could be built on, OR a progressive element that is as yet untested, unevaluated or subject to a considerable amount of uncertainty.
- A red rating indicates a substantial departure from the ideal.

## Parameters of the research framework

Land and beneficial ownership transparency and access to associated information are technical subjects, which can take on a variety of characteristics in different countries. A number of trade-offs had to be made in this research framework in order to arrive at an approach that was focused, concise and practical for testing and replicating in many contexts. Some specific areas that were discussed but set aside in this first research framework include further consideration of gender, and specific formatting of available information. To strike a balance between the depth and practicality of this type of research undertaking, the research team agreed on a primary research framework, which was used for the country case studies in this report. A few areas for further research are also included in the full research framework in Annex I.

To make the research framework manageable and as focused as possible, the research team ultimately agreed on a few parameters for, and limitations to, the primary research framework:

1. The research framework provides a basic structure for researching beneficial land ownership at one primary unit of geographic analysis (for example, a country's national-level legal and policy framework; a specific province or state within the country; or in the case of a country of the United Kingdom, the national and UK laws that have a bearing on that country.)

2. The research framework focuses on individuals and entities that exercise ownership or control over 'large quantities of land', using the Land Matrix threshold of over 200 ha as a rule of thumb. The reason for this was to limit the amount of time spent on assessing the completeness of land registries at smallholder levels, which, while important, is of less relevance to beneficial ownership arrangements. This parameter helps to keep the research framework and analysis focused on assessing the completeness of registries at the level at which powerful actors hiding behind legal entity structures might be interested in land ownership.

3. The research framework focuses on land per se; it does not, for example, consider transparency in certain types of land use, such as oil, gas and mining, as covered by the Extractives Industry Transparency Initiative.



# TESTING THE RESEARCH FRAMEWORK IN SIERRA LEONE

The research framework was tested in Scotland and Sierra Leone to assess how it works in practice, and what modifications might be needed. Though both are influenced by the British legal system, Scotland and Sierra Leone have otherwise quite different political, cultural and geographic contexts. The purpose of choosing two such contrasting countries was to generate a number of different lessons and to ensure the development of a final research framework that would have relevance across many different contexts. Scotland was also chosen in recognition of how advanced it is in terms of beneficial ownership and land transparency legislation.

Given the focus of the research framework not just on legal frameworks but also on their implementation, ideally each country would have been assessed through field-based research. Ultimately, Scotland was tested using a field-based approach and Sierra Leone using a desk-based approach. Brief summaries of both country studies follow; full reports are also available.<sup>10</sup>

## **A desk review of laws, policies and secondary sources in Sierra Leone**

Access to information on who has the right to own, control and benefit from land and natural resources is of critical importance for the promotion of responsible land governance and sustainable development. However, in Sierra Leone, information on how much (and which parcels of) land and natural resources have been allocated to investors, and which investors and other entities have beneficial ownership rights, remains fragmented and inaccessible. Currently, the government of Sierra Leone does not have a national land registry and has not maintained an official record of the amount of land being leased or otherwise allocated by the central government, local governments and landowning families to private individuals, companies and other legal entities.<sup>11</sup> There has not been a law enacted or policy guideline adopted that requires public disclosure of land deals, and “thus there are no measures to ensure even a minimum level of transparency and accountability.”<sup>12</sup>

At the same time, there has been a surge in large-scale land-based investments since the conclusion of the civil war in 2002. Land Matrix research shows that at least 24 land deals were concluded between 2000 and 2015, and these deals cover an area of 773,999 hectares.<sup>13</sup> Without a robust national land registry with information on who has the right to benefit from land and resources, and information on how much (and which parcels of) land and natural resources have been allocated to investors, landholders may be unable to effectively identify and hold accountable investors and entities with beneficial ownership rights to land and resources.

This part of the report tests the research framework on beneficial land ownership in Sierra Leone and provides key insights related to the land tenure system, land registries, company registries and beneficial ownership requirements. This part of the report examines whether there are legal and voluntary frameworks in place to ensure those who own, control and benefit from land are responsible for protecting human rights, the environment and food security.

The main finding from this report is that Sierra Leone currently lacks an adequate legal framework for publicly disclosing information about private individuals, companies, legal entities and other beneficial owners, that would enable the public to identify and hold these actors accountable.

## Background

In Sierra Leone, there are three main categories in which tenure can be classified: state land, private land (i.e. freehold tenure) and communal land governed by customary law.<sup>14</sup> In the Western Area of Sierra Leone, the law recognises freehold tenure, which is governed by common law and statutory law that has existed since 1880.<sup>15</sup> The Northern, Eastern, and Southern Provinces (hereafter the “Provinces”) are primarily rural areas, made up of 149 chiefdoms and characterised by tenure arrangements that are governed by customary laws.<sup>16</sup>

For land investors and other entities and individuals, access to land can be obtained through expropriation, purchase, lease, allocation, inheritance, gift, clearing or adverse possession.<sup>17</sup> The process of acquiring, leasing, transferring or otherwise allocating land differs depending on the tenure type.

---

<sup>10</sup> Community Land Scotland, *Towards Land Ownership Transparency in Scotland* (Community Land Scotland 2018)

<sup>11</sup> Oakland Institute, *Understanding Land Investment Deals in Africa: Country Report: Sierra Leone* (Oakland Institute 2011), p. 20.

<sup>12</sup> Oakland Institute, 2011.

<sup>13</sup> Land Matrix, *Sierra Leone Country Profile: Large-scale land acquisitions in Sierra Leone* (Land Matrix 2016).

<sup>14</sup> United States Agency for International Development, *Country Profile: Property Rights and Resource Governance in Sierra Leone* (United States Agency for International Development 2010).

<sup>15</sup> United States Agency for International Development, 2010.

<sup>16</sup> World Bank, *Sierra Leone: Land Governance Assessment Framework (LGAF) Draft Final Report*, (World Bank 2015).

<sup>17</sup> United States Agency for International Development, 2010.



# A

## LAND REGISTRY STRUCTURE AND INFORMATION COLLECTION

In Sierra Leone, formal land records exist, but these records are limited to the Western Area.<sup>18</sup> Systems for mapping and recording collective rights on communal lands in the Provinces currently do not exist.<sup>19</sup> Furthermore, only a small percentage of all lands in the rural and urban areas are recorded and mapped.<sup>20</sup> Currently, in the Western Area, the Office Administrator and Registrar General (OARG) is charged with registering legal instruments, including records of land transactions, deeds and properties. However, the OARG land registry contains only limited information, is not updated regularly and does not provide information on beneficial ownership. The OARG only maintains a deed registration system and does not maintain a cadastre or title registry that shows the location, boundaries and rights attached to land and resources. The 2015 National Land Policy highlights the lack of an effective, robust land registration and management system for recording and titling land rights as a major issue that must be resolved. The 2015 National Land Policy calls for the current system of deed registration to be replaced with a land registration system.

Sierra Leonean laws applicable to land ownership and registration do not include provisions that require disclosure of beneficial land ownership or stipulate that the identity of beneficial owners must be publicly disclosed. Extractive Industries Transparency Initiative, with support from the German government, commissioned a study of beneficial ownership in the extractive industries in Sierra Leone in 2015.<sup>21</sup> The study concluded: "the current legal framework in Sierra Leone is insufficient to provide the powers needed by government agencies to mandate disclosure by companies operating in the extractives sector or wishing to do so."<sup>22</sup>

The findings from the analysis are colour-coded. A green rating indicates a positive or progressive element, an amber rating indicates an element that is partially positive and could be built on, OR a progressive element which is as yet untested, unevaluated or subject to considerable amount of uncertainty, and a red rating indicates a substantial departure from the ideal.

- Only the full name, volume, page number and land address are shown in the OARG online land registry.
- The 2015 National Land Policy calls for the current system of deed registration to be replaced with a land title registration system.
- There has been an attempt to automate the link between the OARG and the Ministry of Land Country Planning and Environment in the transfer of land documents through the implementation of the Land Registration Project at the ministry and the Electronic Documentation of Land Records Project at the OARG.
- The OARG maintains a deed registration system that applies only in the Western Area and does not maintain a cadastre that shows the location, boundaries and rights attached to land and resources.
- A national registry of land ownership information does not exist.
- There is no land registration system in the Provinces (communal land areas).
- Systems for mapping and recording collective rights on communal lands in the Provinces currently do not exist.
- The following information is missing from the OARG registry: type of land, valuation of land, buy/sell date, names of previous owners, whether the owner is a business or legal entity, business/corporation ID numbers maps/boundary information, and beneficial ownership information.

# B

## ACCESS TO INFORMATION ON LAND OWNERSHIP AND CONTROL

The government of Sierra Leone has not maintained an official record of the amount of land being leased or otherwise allocated by the central government, local governments and landowning families to private individuals, companies and other legal entities.<sup>23</sup> There has not been a law enacted or policy guideline adopted that requires public disclosure of land deals.

- Although the General Registration Act Cap 255 and the Registration of Instruments' Act CAP 256 establish some legal requirements designed to ensure adequate recording of public land allocations to private investors and public accessibility of these records, these legal requirements are often not complied with in practice, leading to situations in which such records are only partially kept.
- The government passed the Right to Access Information Act, 2013. However, in addition to the unavailability of information and the limited capacity of governments to respond to information requests, many people are not aware that they have a legal right to request information from the government.
- The government of Sierra Leone has not maintained an official record of the amount of land being leased or otherwise allocated by the central government, local governments and landowning families to private individuals, companies and other legal entities.
- There has not been a law enacted or policy guideline adopted that requires public disclosure of land deals.

<sup>18</sup> Food and Agriculture Organization, Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land Legislation of Sierra Leone (Food and Agriculture Organization 2015).

<sup>19</sup> World Bank, 2015: 7.

<sup>20</sup> World Bank, 2015: 7.

<sup>21</sup> Sierra Leone Extractive Industries Transparency Initiative, Sierra Leone Beneficial Ownership Roadmap 2016–2020 (Sierra Leone Extractive Industries Transparency Initiative 2016): p. 4.

<sup>22</sup> Sierra Leone Extractive Industries Transparency Initiative, 2016: p. 4.

<sup>23</sup> Oakland Institute, 2011: p. 20

# C

## ACCESS TO INFORMATION ABOUT BUSINESSES AND OTHER LEGAL ENTITIES

While the OARG has developed a registry of businesses operating in the Western Area, there is no official, publicly available list of registered businesses that are operating in the Provinces. In the Western Area, the following types of legal entities can be formed in Sierra Leone: sole proprietorships, partnerships, and limited liability, public and private companies. The OARG registry of businesses is not yet posted online.

The OARG website contains a “business and company name search” feature, but there is no beneficial ownership information listed on the website. Also, there is no established link between the OARG business registry and land registry that shows on a map which companies own what land and where.

- The OARG hosts a registry of businesses; however, the registry is not yet posted online.
- The OARG website contains a “business and company name search” feature, but, there is no beneficial ownership information listed on the website.
- The Companies Act states that companies have the discretion to require members of the company to disclose beneficial ownership information and beneficial interests in shares, but this is discretionary—companies are under no legal obligation to do so.
- There is no official, publicly available registry of businesses operating in the Provinces.
- In the OARG there is no established link between the business registry and land registry that shows on a map which companies own what land and where.
- There are no incentives and/or sanctions for not reporting beneficial ownership information, except if individuals or entities are being investigated under the Anti-Money Laundering and Combating of Financing of Terrorism Act 2012.

<sup>24</sup> Government of Sierra Leone, Mapping a Procedure to Register a Business (Government of Sierra Leone, Office of the Administrator and Registrar General) ([www.oarg.gov.sl/Best%20Business%20for%20me.html](http://www.oarg.gov.sl/Best%20Business%20for%20me.html))

# D

## RESPONSIBILITIES OF LANDOWNING ENTITIES

There are few legally binding obligations imposed on entities that own and control land to consider the environmental and social impacts of their activities. Regarding environmental responsibilities, Sierra Leone's Environment Protection Agency Act, 2008, requires landholders to obtain an Environmental Impact Assessment Licence prior to engaging in activities that involve substantial changes in natural resource extraction, exploitation of hydraulic resources, and other activities.<sup>25</sup> In terms of food security responsibilities, the National Land Policy establishes several socio-economic principles and states "... it is necessary to incorporate measures that will stimulate local production with the ultimate goal of guaranteeing food security and realizing the right to food for everyone, particularly the vulnerable and marginalized."<sup>26</sup> Regarding human rights principles, Sierra Leone has ratified:

- the International Covenant on Economic, Social and Cultural Rights (1976)
- the Convention on the Elimination of All Forms of Discrimination Against Women (1981)
- the African Charter on Human and People's Rights (1986)

These international human rights treaties contain land-related provisions, such as the right to property and housing, and the right to an adequate standard of living.<sup>27</sup>

Sierra Leone has also established a Human Rights Commission charged with protecting and promoting human rights throughout the country.<sup>28</sup> Recently, land was identified as a priority issue of the Human Rights Working Group (a group chaired by the Commission, with members from government, international NGOs, NGOs, civil society and donor agencies).

● Pursuant to the Environment Protection Agency Act, 2008, an Environmental Impact Assessment is required if landowner activities will cause environmental degradation.

● The National Land Policy 2015 calls for measures that will stimulate local production, with the ultimate goal of guaranteeing food security and realising the right to food for everyone, particularly the vulnerable and marginalised. However, this policy is not legally binding.

● The National Land Policy 2015 acknowledges the VGGTs and calls for business enterprises and other non-state actors to address human rights concerns, but these obligations are not legally binding.

● The Human Rights Commission has recently developed "Guidelines for Monitoring Business and Human Rights in Sierra Leone," and is currently sharing the guidelines with members of the private sector.

● Land was identified as a priority issue of the Human Rights Working Group (a group chaired by the Commission with members from government, international non-governmental organisations, NGOs, civil society, donor agencies) in late 2017.

<sup>25</sup> Government of Sierra Leone, Environment Protection Agency Act (Government of Sierra Leone 2008)

<sup>26</sup> Government of Sierra Leone, Draft National Land Policy of Sierra Leone (Government of Sierra Leone Ministry of Lands, Country Planning and the Environment) 2015

<sup>27</sup> International Convention on Economic, Social and Cultural Rights, Article 11; African Charter on Human and People's Rights, Article 14; and Convention on the Elimination of all Forms of Discrimination Against Women, Article 16.

<sup>28</sup> Human Rights Commission of Sierra Leone ([www.hrcsl.org/History](http://www.hrcsl.org/History)).

# RECOMMENDATIONS TO IMPROVE TRANSPARENCY IN SIERRA LEONE

Based on the findings and analysis, this study provides a set of evidence-based recommendations for the government to consider adopting:

## 1.

Establish a national-level registry of robust and publicly accessible information, including information about beneficial ownership and control of land and natural resources in the Provinces.

## 2.

Enact a law or regulation that requires beneficial ownership information to be included in a land registry system that covers the whole country. The land registry/ies should include maps and cadastral information for each parcel, including the land type, last buy/sell date, name of current owner, name of previous owner, business or corporation identification, type of business/organisation, start and end date of a lease or concession, as well as information on beneficial ownership. The law should also regulate the protection of and rights to communal resources.

## 3.

Regularly update the information included in the land and business registries and require private companies and other entities to disclose beneficial ownership information.

## 4.

Ensure that all information about land leases and concessions is regularly updated and easily accessible to the public in the national land registry.

## 5.

Build government and public capacity to utilise land registries through training workshops, pamphlets and other capacity-building tools, with a particular focus on ensuring communities are able to access and recognise land registration systems as valid, legitimate and binding.

## 6.

Provide the public with assistance mechanisms that remove or reduce language, literacy, financial and other barriers that need to be overcome for communities to embrace and effectively utilise land registration information.

## 7.

Enable the public to understand their legal rights to access information, obtain redress through the justice system, and hold government and private actors accountable for violating the environment, human rights and food security principles as established in the National Land Policy and other legal and policy frameworks.

# TESTING THE RESEARCH FRAMEWORK IN SCOTLAND

## A field study

Access to information on who has the right to own, control and benefit from land and natural resources is of critical importance for the promotion of responsible land governance and sustainable development. Scotland has a central land registry and primary legislation that makes provisions for the disclosure of beneficial owners of land. However, the centralised Land Register does not currently contain information on all land in Scotland.

The Land Register stores a 'snapshot' record of ownership, rather than a live dataset of up-to-date, useable ownership information. Ownership information that does exist is fragmented, and obtaining it is costly and complicated for a citizen. Unless these challenges are addressed, it is unclear how legislative progress in increasing ownership transparency will translate into an actual increase in transparency for an average citizen.

This case study analyses the land registration system and applicable legal framework in Scotland, to determine whether they ensure adequate transparency, as well as accountability, with regards to beneficial ownership in particular. The report provides key insights into the land tenure system, land registries, company registries, and beneficial ownership regime, by applying the research framework on beneficial ownership and identifying measures that make it possible to improve land governance practices, and ensure public disclosure of beneficial ownership interests and dissemination of information. Based on this analytical tool, the report examines if the legally binding and non-binding legal and policy frameworks currently in place are sufficient to ensure that those who own, control and benefit from land are responsible for protecting the environment, human rights and food security.

## Background

Around one-fifth of the Scottish population live in rural areas, which make up 94 per cent of Scotland's land area. The remaining 6 per cent of land is urban area inhabited by 82 per cent of the population.<sup>29</sup>

In Scotland there are two primary categories of land tenure: private land, the owners of which may be private individuals or legal entities; and state lands, the owners of which are a public body of some description, either national or local.

There is a third distinct category of land tenure known as crofting tenure, which is mainly found in the Highlands and Islands of Scotland.<sup>30</sup>

In the last 20 years, land reform has been on Scotland's policy agenda, and Scotland's policy around transparency in land ownership is related to its wider agenda of land reform and community empowerment. The Land Reform (Scotland) Act 2016 provided for a "register of controlling interests", which will make information about people with control over land in Scotland publicly available.

<sup>29</sup> Scottish Government, Land Reform Review Group Final Report - The Land of Scotland and the Common Good (Scottish Government, 2014): 20.

<sup>30</sup> Around 25 per cent of land mass in the Highlands and Islands is under crofting tenure (Scottish Crofting Federation, [www.crofting.org/aboutus](http://www.crofting.org/aboutus)).



# A

## LAND REGISTRY STRUCTURE AND INFORMATION

There are two main registers recording information on ownership and control of land in Scotland: the deed-based Register of Sasines and the map-based Land Register, both held by the Keeper of the Registers of Scotland. For publicly held land and assets, “common good” land and land used for agriculture, forestry and other rural activities, other bodies hold registries on ownership and control. Not all information is contained in the centralised registry, and there may be a degree of overlap in the information held by the central registry and elsewhere. Ultimately, the aspiration is for all information to be contained in the Land Register.

Registration of land is most commonly triggered when it is subject to buying, selling or taking out a mortgage. The Land Registration etc (Scotland) Act 2012 reformed and restated the law around land registration in Scotland, enabling the Registers of Scotland to register land itself, and for landowners to voluntarily do so. However, progress towards the completion of the Land Register has been slow.

Rural areas and publicly owned lands are less often subject to transactions and are particularly underrepresented in the Land Register. The Registers of Scotland’s primary role is to “keep” titles to land. Most transactions now trigger a new “snapshot” of information in the Land Register, but where there have been no transactions since the 2012 Act, the recorded snapshot of regarding ownership may be outdated.

- A central registry of land ownership information exists.
- Information collected in the central registry is comprehensive. Information is required by law and title to land will not be registered if that information is not provided.
- Primary legislation making provision for beneficial ownership information to be provided exists.
- Information about most land exists somewhere but it is stored by different bodies in different places and formats.
- Questions remain around definitions of beneficial ownership, including who will be required to provide information, in what format and how often.
- Only 65 per cent of titles and 35 per cent of land mass are recorded in the central registry.
- The central registry is a “record” of a snapshot in time, not a live dataset of ownership information.

# B

## ACCESS TO INFORMATION ON LAND OWNERSHIP AND CONTROL

The information contained in the Land Register on a given piece of land is in principle accessible to anyone, although access is subject to fees, and in some cases without legal training the information is difficult to interpret. The full research report on Scotland's assessment of the accessibility of the information on land concludes that there is essentially no discrimination in the type of information which can be accessed – the same information that is available to a business or commercial user is also available to a citizen. The full list of information which can be accessed matches the list of information which the Registers of Scotland is required to keep. However, access to the same information is considerably more expensive for a citizen than for a business, and substantially different in the way it must be searched for and the method of provision. Overall, uncovering basic information can be a lengthy process for a citizen. Furthermore, the limitations on access to information about land are an obstacle to providing publicly available and accurate statistics on the distribution of ownership among the different landowning legal entities that operate in Scotland.

- There is a principle of public access: no one needs to prove a “legitimate interest” to access information.
- All information collected in all registers of land can be accessed by some means.
- Access to ownership information on public assets, where it exists, is free.
- The Land Register can be searched by different criteria, but only by commercial users, not by citizens.
- Information accessed often requires legal training to interpret.
- Information on beneficial ownership will in the future be held in “a public register”, but what this will look like in practice is yet to be determined.
- Access to information on landownership (and other land information) is very fragmented.
- No ownership information held in the Land Register can be accessed by citizens for free.
- Citizens pay more than commercial users for the same information.
- There is no publicly scrutinised framework which outlines principles regarding the provision of land information, nor is there a plan to implement those principles.

# C

## LEGAL ENTITY REGISTRY AND INFORMATION COLLECTION

The Land Reform (Scotland) Act 2016 (Part 3) created an obligation on Scottish Ministers to adopt regulations providing for a requirement for all those owning land to register their beneficial ownership information on the Register of Controlling Interests (ROCI). This requirement is intended to apply to all those acquiring or owning land, including companies, Scottish limited liability partnerships and individuals with a controlling influence over land, such as trustees.<sup>31</sup> The secondary regulations are currently under development and should reflect a broad consensus among stakeholders regarding the need for increased transparency in land ownership and controlling interests.

As these regulations have yet to be presented before Parliament, key points remain to be defined: including the definition of a controlling interest in land; the extent of required information; information updates; synergies between new and existing registers; and public access to the information. These elements will largely determine whether Part 3 of the Act contributes to increased transparency in the control, use, transfer and ownership of land.

- Reporting requirements for domestic entities are strong and information is regularly updated.
- Some domestic entities are required to disclose beneficial ownership information, including limited liability partnerships and Scottish limited partnerships.
- Third parties have a responsibility for providing beneficial ownership information.
- Criminal and civil sanctions are used to encourage disclosure.
- A definition of beneficial ownership based on the EU directive definition has been transposed into UK law.
- The UK is drafting legislation that will require overseas entities to provide beneficial ownership information before buying land in the UK.
- There is no information available on the distribution of different entities which own land in Scotland.
- Overseas entities are not required to disclose beneficial ownership information.

<sup>31</sup> Letter from Minister for Environment, Climate Change and Land Reform , 3 March 2016, to Rob Gibson MSP, Convener of Rural Affairs, Climate Change and Environment Committee, Scottish Parliament, Annex para 23.

# D

## ACCESS TO INFORMATION ABOUT LEGAL ENTITIES

For entities registered with Companies House, information is very easily accessible by a citizen, at no cost. There are very limited circumstances under which a company can ask for beneficial ownership information to be withheld, mostly relating to a real threat of serious violence or intimidation.<sup>32</sup>

There is no map or list-based register of legal entities which own land in Scotland. There is no interaction between the Land Register in Scotland and registers of legal entities held in Scotland, at the UK level, or elsewhere. If a citizen is searching for information about land, and search results reveal that the entity is a legal person, then other registers held in different places by different administrative bodies will need to be consulted to find out any further information.

In summary, there are two key hurdles to transparency that are specifically relevant to land owned or controlled by entities other than natural persons:

- By no means all legal entities which own land are required to be registered in any publicly accessible register. This is true of foreign entities and some types of domestic entity.
- The lack of interaction between the Land Register and registers of legal entities which do exist put a practical barrier in the way of citizens trying to link up available information.

● Pursuant to the Environment Protection Agency Act, 2008, an Environmental Impact Assessment is required if landowner activities will cause environmental degradation.

● The National Land Policy 2015 calls for measures that will stimulate local production, with the ultimate goal of guaranteeing food security and realising the right to food for everyone, particularly the vulnerable and marginalised. However, this policy is not legally binding.

● The National Land Policy 2015 acknowledges the VGGTs and calls for business enterprises and other non-state actors to address human rights concerns, but these obligations are not legally binding.

● The Human Rights Commission has recently developed “Guidelines for Monitoring Business and Human Rights in Sierra Leone,” and is currently sharing the guidelines with members of the private sector.

● Land was identified as a priority issue of the Human Rights Working Group (a group chaired by the Commission with members from government, international non-governmental organisations, NGOs, civil society, donor agencies) in late 2017.

<sup>32</sup> Companies House, PSC Register Summary Guidance (Companies House 2016a)

# E

## RESPONSIBILITIES OF LANDOWNING ENTITIES

The rationale for increasing the transparency of land ownership and control in Scotland has focused on ensuring the accountability of those who own, control, manage, use or access land to Scotland's public. To hold someone accountable, the responsibilities of that person towards the land need to be well-defined.

Laws, regulations and voluntary guidance regarding environmental and social impacts do exist, though they are not yet comprehensive. Compared to land rights, which are well-known and legally enforced by the courts, the conversation around land responsibilities in Scotland is relatively young. Laws and regulations tend to govern a specific activity which takes place on land at a specific moment in time, rather than encompassing ongoing environmental and social responsibilities of landowners. Guidance tends to encompass these broader principles of land stewardship and use, but lacks statutory standing and enforceability.

- Laws and regulations exist covering environmental standards for agricultural land.
- Environmental Impact Assessment rules require public bodies to take decisions with full knowledge of likely environmental impacts.
- Primary legislation about land acknowledges the VGGTs and other relevant human rights regulations and legislation.
- A Land Rights and Responsibilities Statement exists, but it has no statutory force.<sup>33</sup>
- New guidance will be issued around engaging communities in decisions around land, but it will have no statutory force.<sup>34</sup>
- A landowner can be charged for offences committed on her land by an employee or agent, but a lack of transparent ownership information has so far limited enforceability

<sup>33</sup> Created under Part 1 of the Land Reform Act (Scotland) 2016, available for download at: [www.gov.scot/Publications/2017/09/7869](http://www.gov.scot/Publications/2017/09/7869)

<sup>34</sup> Provided for in Part 4 of the 2016 Act, available for download at: [www.gov.scot/Publications/2018/04/2478/downloads](http://www.gov.scot/Publications/2018/04/2478/downloads)

# RECOMMENDATIONS TO IMPROVE TRANSPARENCY IN SCOTLAND

Based on the findings and analysis, this study provides a set of evidence-based recommendations for the government to consider adopting:

The Scottish Government has committed to increasing transparency in general, and to greater transparency on the control of land specifically.<sup>35</sup> Part 3 of the Land Reform (Scotland) Act 2016 represents legislative progress towards this goal, by making provision for the new Register of Controlling Interests (ROCI). There is a long history of land registration in Scotland and a presumption of public access to information about land ownership. However, there are some key factors which are compromising land ownership transparency in practice. The main, centralised register of land is incomplete and not integrated with other sources containing information about (for example) legal entities which own land. There is currently a gap between the desire for a “publicly accessible” land registry and the reality. Access for citizens to anything other than the most basic information is fragmented, expensive and complicated. The apparatus of land registration is focused on keeping information regarding title to land, rather than on the collection and provision of information to enable citizens to hold decision-makers and those who own or control land to account. If the provisions in Part 3 of the 2016 Act are implemented within this existing framework, there is a risk that the benefits to transparency will be limited.

Below is a summary evaluation of Scotland’s overall position relative to three recommendations regarding transparency in land ownership and control:

## The information needs to be collected and collated

- Legislation exists which enables the collection of information on the beneficial ownership of land.
- Information on domestic legal entities, including some beneficial ownership information, is already collected at the UK level.
- A structure exists for centralised information collection, though the register is incomplete and progress towards completion is slow.
- Land registers and registers of legal entities do not “talk” to each other.

## The information needs to be kept up to date

- The focus is on keeping information regarding title to land. Records provide only a snapshot of information at the time when the title was registered, or last changed. Where land last changed hands before 2012, there is no guarantee that the owner named on the title sheet is the current legal owner.

## The information needs to be made accessible

- There is a principle of public access to information held by public authorities, including information in the Land Register.
- The benefit to transparency of Scotland’s legislative progress on requiring beneficial ownership information to be collected risks being limited if this information collection is implemented within the existing, flawed framework.
- However, the underlying framework for disclosing information about land does not work to promote transparency: for citizens who engage with it, the framework is expensive and fragmented.

<sup>35</sup> Scottish Government, A Nation with Ambition: The Government’s Programme for Scotland 2017-18 (Scottish Government)





# FEEDBACK AND SUGGESTIONS FOR IMPROVING THE RESEARCH FRAMEWORK

Although the intention behind the development of the research framework was to understand policy around beneficial ownership specifically, the research process showed the need for a more fundamental examination of transparency in land ownership. By eliminating the questions specific to beneficial ownership, the research framework could be used more generally to examine lower thresholds of transparency. Some specific suggestions for modifications have been made to the research framework since testing, and are indicated as additions in Annex I. There are also three high-level recommendations that need to be explored further:

- 1.** Further case studies could attempt to document a concrete link between transparency and enforcement of responsibilities, or instances where remedy was not possible due to lack of transparency of beneficial ownership arrangements.
- 2.** In countries without a robust, comprehensive national land registry system (e.g. Sierra Leone), the research framework should include more questions on the barriers that must be overcome to develop an effective land registration system to make it practically useful for government and advocates. Barriers may include lack of financing and capacity, as well as corruption. It may be useful for researchers to consider these barriers in their research.
- 3.** Privacy concerns must be weighed with the interests of transparency and should be considered in this research framework as possible reasons why transparency or access to information may be limited.



# CONCLUDING REMARKS

The surge in large-scale commercial land investments over the past decade has potentially significant repercussions for governments and citizens in developed and developing countries alike. In 2010 the World Bank first suggested the idea of a Land Transparency Initiative, similar to the premise behind the Extractives Industry Transparency Initiative, to reach an international consensus on data collection, standards and disclosure of large-scale land acquisitions. Further research has identified how such an initiative might be structured. The research framework proposed in this paper may provide a useful supporting tool for a future land transparency initiative and can, in the meantime, help civil society and governments assess the strengths and weaknesses of the policies and laws governing beneficial land ownership.

The application of this research framework yielded critiques of two very different countries: Sierra Leone and Scotland. The purpose of this research was not to form a comparative analysis of Scotland and Sierra Leone; however, it is worth highlighting a few points of convergence and divergence. Whereas Sierra Leone does not have a national land registry, or complete land registries at any other administrative level, Scotland has a central land registry and primary legislation that makes provision for the disclosure of beneficial owners of land.

Barriers to public access to collected information remain in both countries, and each country also has at least some policies and provisions around stewardship responsibilities — though they are more robust in Scotland. Testing access to information in both countries proved difficult or impossible given resource constraints, in terms of time and money; this is a finding in itself. In order to hold landowners accountable under these laws and policies, ownership information needs to be not only collected, but also accessible.

We invite other researchers to continue testing and refining the proposed research framework. We hope that additional research and refinements can consider the trade-offs between privacy concerns and the objectives of public access to information. Case studies examining the links between transparency and accountable stewardship can also help to continue to build an evidence-based global movement for transparency of beneficial land ownership.

# ANNEXES

## 1. The detailed research framework

Throughout the research framework, the ♦ symbol denotes suggestions for how the research could be taken further if demand allows. ■ Indicates additions that were made to the research after testing.

### A. LAND REGISTRY STRUCTURE AND INFORMATION COLLECTION

There is no one internationally agreed best practice for land registries. However, in the interests of transparency and collecting information which can be used to identify owners and hold them accountable, countries might have centralised land registries that contain information on the real beneficial owners (foreign and domestic) of all types of land; basic mapping coordinates; and any specific limitations on the use of the land in question.

Questions	Suggested methods
<p>1. How is the land registry in the country structured? (Is there a centralised registry for all types of land ownership and control, including long-term leases and concessions? Does it include customary or communally used land)? At the national level? Subnational level? Are records of different types of land ownership kept at different levels? Which administrative body controls the registries? Please specify if there is a specific type of land (e.g. communal land or land controlled by customary law) that is not included in a registry.</p>	Legal review
<p>1.1 In practice, are the registries maintained according to the law?</p> <p>♦ Please additionally assess at the subnational level or less primary registries.</p> <p>■ Is a specific type of land that (legally) should be included in the registry consistently missing in practice? (For example, customary held land or communally used land).</p> <p>■ Do specific groups of people or types of land face barriers to registration? (For example, access to surveyors, knowledge of registration protocols, etc.) Do you need to be able to identify legitimate interest or pay a fee?</p>	Interviews with registry officials and civil society organisations working on transparency, governance, and land rights
<p>2. For each registry in the country, does the law specify what information should be contained? If yes, please select all that apply:</p> <ul style="list-style-type: none"> <li>• type of land</li> <li>• type of tenure</li> <li>• valuation</li> <li>• chain of transactions in the past or at minimum the last buy/sell date</li> <li>• name of current owner</li> <li>• names of previous owners</li> <li>• business ID number of a corporate owner</li> </ul>	Legal review

Questions	Suggested methods
<ul style="list-style-type: none"> <li>• personal ID of a natural person</li> <li>• start and end date of a lease or concession</li> <li>• for public land, specific purpose for which a concession or lease was granted</li> <li>• maps</li> <li>• beneficial ownership information</li> </ul> <p>■ If the owner is a legal entity (for example, a limited liability company) or a legal arrangement (for example, a trust) what information is available in the land registry?</p>	
<p>2.1 In practice, which elements of this information seem complete and which are systematically missing information? If the country has more than one registry, do stakeholders perceive some to be more complete than others? Which?</p>	<p>Interviews with registry officials or local government to understand in practice what common gaps are (if any), and with civil society organisations working on land rights. If the registry is publicly available, the researcher should examine the registry herself.</p> <p>◆ For simple research, researchers should choose whichever approach they believe will be easiest in their context; for more complex assessments, both should be used.</p>
<p>3. Does the government regularly update registry information? Are others, such as landowners, responsible for such updates? (Please answer for each registry).</p>	<p>Legal review; interviews with registry officials If the registry is publicly available, the researcher should examine the registry herself.</p>
<p>4. Do any of the laws or regulations that govern land-ownership and control, including long-term leases and concessions, require beneficial ownership to be provided? (If no, does the country have any policies or standards that address beneficial ownership of land?)</p>	<p>Legal review</p>
<p>4.1 Are there any incentives to encourage individuals or entities to meet voluntary disclosure standards, even if they are not required to do by law? (If yes, what?)</p>	<p>Legal review + interviews with corporate law firms in the country; country Extractives Industry Transparency Initiative reports; <a href="http://openlandcontracts.org">openlandcontracts.org</a></p>

## B. ACCESS TO INFORMATION ON LAND OWNERSHIP AND CONTROL, INCLUDING LONG-TERM LEASES AND CONCESSIONS

For the purpose of enabling communities or governments to hold landowners accountable, countries might have registries that are open to the general public without a fee; make them available online; and make them searchable by different criteria.

Questions	Suggested methods
<p>1. Can the public access information about land ownership and control? Please select all forms of ownership that apply. (If the country has different registries for different types of land, please answer separately for each primary registry).</p> <ul style="list-style-type: none"><li>◆ Can this information be analysed in aggregate or only by individual titles/land use certificates?</li><li>◆ What are the technical specifications and formatting of this data?</li><li>◆ If registries exist at the subnational level, please assess the registry in a representative (by population or GDP/capita) region/state.</li><li>◆ Can land registry information be disaggregated by gender?</li></ul> <p>How and who</p> <ul style="list-style-type: none"><li>• free</li><li>• online/email/mail</li><li>• within a specified timeframe</li><li>• any member of the public</li><li>• for a small specified fee</li><li>• in person only</li><li>• ad hoc timeframe/not specified</li><li>• only an individual or entity who can prove a relationship to the land</li></ul> <p>What type of information</p> <ul style="list-style-type: none"><li>• all land record information collected by law</li><li>• valuation</li><li>• last buy/sell date</li><li>• name of current owner/legal owner</li><li>• names of previous legal owners</li><li>• start and end date of a lease or concession</li><li>• for public land, specific purpose for which a concession or lease was granted</li><li>• maps</li></ul>	<p>Legal review; desk-based research for any citizen report cards/user feedback surveys with a gender lens if available; if the law provides a simple procedure for submitting a request, try submitting a request at the start of the research and see what is received.</p>
<p>2. If a registry cannot be accessed by the public, what (if any) authorities are able to access it? (For example, law enforcement, tax agencies, etc.)</p>	<p>Legal review; interviews with registry officials.</p>

Questions	Suggested methods
<p>3. Are there exceptions under which people can be denied access to land ownership or concession information? If so, who has control to decide whether an exception will be granted? Or are there circumstances in which owners can request certain information be included in the register, but not be made public? If so, please list them.</p>	<p>Legal review + interviews with transparency/governance civil society organisations and journalists.</p>
<p>4. Can the land registry be searched by: (Please select all that apply. If the country has different registries for different types of land, please answer separately for each registry at the national level).</p> <p>◆ If registries exist at the subnational level, please also assess the registry in a representative region/state by population or GDP/capita. (If there is no national registry, please use these instructions for the primary assessment, too).</p> <ul style="list-style-type: none"> <li>• land owner/lease holder name</li> <li>• parcel/plot #</li> <li>• beneficial owner</li> <li>• type of concession</li> <li>• type of land use</li> <li>• legal entity registration # of owned by a business/trust/other legal entity</li> </ul>	<p>Legal review</p>
<p>◆ Are there any laws in the country that require publication of concession data and contracts? If yes, which types of concessions? What type of information does the law require be published?</p> <p>◆ Does the law require information on beneficial ownership be provided during the application for a long-term lease or concession? If so, is this information made available (and where/how?)</p>	<p>Legal review</p>



### C. LEGAL ENTITY/ARRANGEMENT REGISTRY AND INFORMATION COLLECTION

All legal entities (national and international) might need to provide information to the government on their beneficial owners; beneficial ownership information might need to be provided before land acquisition; third parties might have responsibilities for providing beneficial ownership information; and sanctions and incentives might be used to encourage disclosure.

Questions	Suggested methods
<p>1. What types of legal entities/arrangements (for example, national or international companies, trusts, etc.) operate in the country?</p> <p>◆ For a more advanced methodology, please map out the primary types of legal entities/arrangements that are used to own and control land in the country.</p>	Interviews with land rights and transparency civil society organisations, investment law firms, and land registry officials; review of concession auction bidder list (if any).
<p>2. Does the country have a definition of beneficial ownership? If so, please describe the different disclosure requirements for beneficial ownership and control of each type of legal entity/arrangement in C1.</p>	Legal review
<p>3. Does the country have a company registry and/or trust registry?</p> <p>3.1) Does each type of legal entity have its own registry or is there one centralised registry for all?</p> <p>3.2) Are these registries at the national level or at subnational level?</p> <p>3.3) Do these registries contain information on domestic and international entities? They contain the same information on each?</p> <p>3.4) What types of information are collected in these registries, particularly as relates to beneficial ownership?</p> <p>◆ What format is this information in?</p>	Legal review
<p>4. What responsibilities, if any, do third parties have to register information on the beneficial ownership of these legal entities? How is it registered?</p>	Legal review + interviews with corporate law firm, accountant firm.
<p>5. Are real estate agents/notaries/land agents/brokers/lawyers who engage in land transactions required by law to identify the beneficial owner of their customers?</p>	Legal review + interviews with real estate lawyers or businesses.
<p>6. Are there any incentives and/or sanctions on third parties or on legal entities themselves for not reporting required beneficial ownership information?</p> <p>◆ Are these different across industries or foreign or domestic ownership?</p>	Legal review + interviews with corporate law firm, accountant firm.

Questions	Suggested methods
<p>7. To what extent are land registry and legal entity registries automatically synchronised? If someone is searching for information do they have to search through different registries to get the information about the same natural person / legal entity / plot of land?</p> <p>◆ For a more comprehensive assessment, the researcher should test this herself.</p>	Legal review + interviews with registry officials of both types of registries.
<p>8. Do foreign companies, trusts, or other legal entities/arrangements need to register with the relevant registry before purchasing, leasing or seeking to acquire a concession (through auction, etc.) in the country?</p>	Legal review; interviews with real estate brokers or ministries/government offices in charge of approving or allocating concessions.

#### D. ACCESS TO LEGAL ENTITY/ARRANGEMENT REGISTRY INFORMATION

For the purpose of enabling communities or governments to hold beneficial owners accountable, countries might have registries open to the general public without a fee; make them available online; and make them searchable by different criteria.

Questions	Suggested methods
<p>1. Can the public access ownership information?</p> <ul style="list-style-type: none"> <li>• for free</li> <li>• within a legally specified period of time</li> <li>• online</li> <li>• any member of the public</li> <li>• for a published fee (how much?)</li> <li>• at any time</li> <li>• only in person or by written request</li> </ul>	Legal review; desk-based research for any citizen report cards/user feedback surveys; interviews with journalists and transparency civil society organisations.
<p>2. Are there exceptions under which people can be denied access to ownership information? Who has authority to decide whether an exception will be granted? If so, please list. Or are there circumstances in which owners can request certain information be included in the register, but not be made public? If so, please list them.</p>	Legal review; desk-based research for any citizen report cards/user feedback surveys; interviews with journalists and transparency civil society organisations.
<p>■ Is the information about the ultimate ownership of the company available, and if so, is it easily integrated with the country's company register? Is the data itself open and in CSV format?</p>	
<p>3. Please describe who is able to access the beneficial ownership information and the process to access it.</p>	Legal review + interviews with corporate law firms + registry officials.

## E. RESPONSIBILITIES OF STEWARDSHIP/USE BY ENTITIES WITH OWNERSHIP OR CONTROL

Researchers should consider both required and voluntary actions that landowners are required/encouraged to undertake. Ideally a country would have clear, legally enforced requirements for social and environmental stewardship by landowners. The second-best alternative would be to have national or international guidelines that are promoted by proactive incentives.

Questions	Suggested methods
1. In the national-level laws and regulations, what responsibilities are imposed on entities that own and control land to consider environmental and social impacts of their activities? (For example, avoiding environmental pollution, allowing access or harvesting rights to other individuals, etc.)	Legal review, with particular attention to Environment and Social Impact Assessment laws, investment law, environmental law
1.1 What mechanisms exist to enforce these laws? 1.2 Does the country have any related voluntary standards or policies in place? ◆ Do subnational units have different incentives to promote adherence to voluntary standards?	Interviews with legal entities that have chosen to voluntarily disclose ownership information or contract information about the decision to do so (check <a href="http://openlandcontracts.org">openlandcontracts.org</a> and Extractive Industries Transparency Initiative reports)
2. If the country has voluntary policies/standards outlining landowner/ controller best practice relating to the environmental and social benefit of the land under their control, are any incentives provided to encourage people to meet these standards? (If yes, what are they?)	National Extractive Industries Transparency Initiative framework; investment law
◆ If legal entities/arrangements owning land or concessions in a specific country primarily stem from one or two source countries, do those source countries have any laws or policies that require certain environmental or social standards be applied in the legal entity's operations?	Review published contracts and registry to find source country; conduct legal analysis of source country laws on overseas operations (e.g. Alien Tort Claims Act in USA)

## F. SUGGESTED CASE STUDIES

When research is conducted for advocacy purposes, case studies can help to demonstrate the impact of lax beneficial ownership requirements or land registry transparency in a country.

Questions	Suggested methods
<p>a. Testing access to information: <i>Attempt to secure a land contract for a specific parcel of land or specific owner. Did the process work according to the law? What information was contained in the disclosure? Were you able to verify any ownership information with a corporate registry?</i></p> <p>b. The G20 principles on beneficial ownership use a threshold of a 25 per cent share in a legal entity to define a beneficial owner. Is this an effective threshold? <i>Find a case study where beneficial ownership has been significant but below the 25 per cent threshold. What have been the implications of this in terms of accountability?</i></p>	

# ANNEXES

## 2. Instructions for researchers

### Time allocation

The desk-based researcher took seven working days to complete his report; the field-based research required 15 working days. This is not enough information to determine how or why these times differed but may be a helpful reference for others planning similar assessments.

### Using the research framework

#### SUGGESTED DOCUMENTS AND LEGISLATION FOR COLLECTION AND REVIEW

Primary national land laws that cover how land is managed and acquired; relevant government policies and other guidance pertaining to land; primary investment laws (national and international investors); primary laws governing companies, trusts and other legal vehicles; primary freedom of information law and any related regulations or policies that specifically govern access to land and/or company data; governing structure and transparency of state-owned enterprises and concessions; Environment and Social Impact Assessment law/procedures.

- Any subnational policies or regulations covering land acquisition, investment approvals, or land registration and management.

#### BACKGROUND INFORMATION

The researcher should begin by providing background information on the country, specifically as it relates to the legal system that governs land, legal entities and access to information.

- Land management in the country: What are the primary land tenure arrangements in the country? What is the country's overall economic profile (per cent GDP derived from natural resource extraction, agriculture or other land-based activities) Does the country's legal system recognise customary law and / or community land ownership? What government entities are allowed to lease or allocate concessions for public land?
- Management of land for social or environmental welfare: Does the country acknowledge the VGGTs, African Land Policy Initiative guidelines? Are there guidelines for Free Prior Informed Consent or community participation in decision-making?
- Access to information and justice legal and policy framework: Does the country have freedom of information laws? Does the country have an independent judiciary? Is there an anti-corruption law that relates to land sales?
- Beneficial ownership legal and policy framework: Which laws or standards regulating the disclosure of beneficial ownership has the country committed to? What has the country committed to with regards to money laundering and tax evasion?

In each assessment, the research framework should focus on one geographic unit of analysis.

- In countries with federal systems, where answers could differ between administrative units, the researcher should provide responses for a) the highest level, and b) a "representative" state or region (could be with average GDP/capita, average population size), or in the case of the United Kingdom, country-level.
- Apply a gender lens: can women equally own and inherit land according to the law? Does this happen in practice?

## Coding/analysing the results

Researchers may choose to conduct the coding themselves, or to convene a group of experts to assess the research framework against an agreed standard.

For categories A, C and F, countries can be analysed in terms of the presence and enforcement of laws and presence and incentives of policies/standards.

For categories B and D, countries can be assessed in terms of the range of the stakeholders who are able to access information according to the law; the scope of information that can be accessed under the law compared with the scope of information collected; and any discrimination in access or restrictions on access that appear in report cards/interviews.

For category E, the presence of a systematised exchange of information between registries will be considered strong, and ad hoc exchange of information via enabled individuals will be considered positively but will not be considered as strong.

## Peer review

We recommend securing “peer reviewers” who are experts on the country of interest to review the assessment findings. For each of the test studies (Scotland and Sierra Leone), this approach was used.

# BIBLIOGRAPHY

BTeam, *Putting Beneficial Ownership Transparency into Practice*

<http://bteam.org/wp-content/uploads/2015/11/B20-Beneficial-Ownership-in-Practice.pdf>

(Turkey: BTeam 2015).

Community Land Scotland, *Towards Land Ownership Transparency in Scotland*

[www.communitylandscotland.org.uk/wp-content/uploads/2018/04/CLS\\_Towards-Land-Ownership-Transparency-in-Scotland.pdf](http://www.communitylandscotland.org.uk/wp-content/uploads/2018/04/CLS_Towards-Land-Ownership-Transparency-in-Scotland.pdf)

(Community Land Scotland 2018)

Companies House, "PSC Register Summary Guidance"

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/621568/170622\\_NON-STAT\\_Summary\\_Guidance\\_4MLD\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf) (Companies House 2018)

Cotula, L. and Blackmore, E., *Understanding agricultural investment chains: Lessons to improve governance, Rome and London* (Rome and London: Food and Agriculture Organization and IIED 2014)

<http://pubs.iied.org/pdfs/12574IIED.pdf>

Food and Agriculture Organization, *Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the Land Legislation of Sierra Leone* Analytical Assessment Report

[www.fao.org/3/a-i5202e.pdf](http://www.fao.org/3/a-i5202e.pdf)

(Rome: Food and Agriculture Organization 2015).

Food and Agriculture Organization, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*

[www.fao.org/tenure/voluntary-guidelines/en/](http://www.fao.org/tenure/voluntary-guidelines/en/)

(Rome: Food and Agriculture Organization 2012).

Government of Sierra Leone, *Draft National Land Policy of Sierra Leone*.

<https://landportal.org/library/resources/draft-national-land-policy-sierra-leone>

(Government of Sierra Leone, 2015)

Government of Sierra Leone, Environmental Protection Agency Act

<https://epa.gov.sl/useful-resources/acts-and-regulations/> (Government of Sierra Leone, 2008)

Government of Sierra Leone, *Mapping a Procedure to Register a Business*

[www.oarg.gov.sl/Best%20Business%20for%20me.html](http://www.oarg.gov.sl/Best%20Business%20for%20me.html)

(Government of Sierra Leone, Office of the Administrator and Registrar General)

Human Rights Commission of Sierra Leone.

[www.hrcsl.org/History](http://www.hrcsl.org/History)

Land Matrix, *Sierra Leone Country Profile: Large-scale land acquisitions in Sierra Leone*

<http://www.landmatrix.org/en/announcements/2016/11/03/sierra-leone-country-profile/> (Land Matrix, 2016).

Land Matrix

[www.landmatrix.org/en/about](http://www.landmatrix.org/en/about)

Oakland Institute, *Understanding Land Investment Deals in Africa. Country Report: Sierra Leone*

[www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_SierraLeone\\_Land\\_Investment\\_report\\_0.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SierraLeone_Land_Investment_report_0.pdf) (Oakland Institute, 2011).

Open Government Partnership.

[www.opengovpartnership.org/about/about-ogp/how-it-works](http://www.opengovpartnership.org/about/about-ogp/how-it-works)

Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*

<http://www.achpr.org/instruments/achpr/>

(Organization of African Unity, 1981)

Scottish Crofting Federation

[www.crofting.org/aboutus](http://www.crofting.org/aboutus)

Scottish Government, *A Nation with Ambition: The Government's Programme for Scotland 2017-18*.  
[www.gov.scot/Publications/2017/09/8468/downloads](http://www.gov.scot/Publications/2017/09/8468/downloads)  
(Scottish Government, 2017)

Scottish Government, *Land Reform Review Group Final Report – The Land of Scotland and the Common Good*  
[www.gov.scot/Publications/2014/05/2852/downloads#res-1](http://www.gov.scot/Publications/2014/05/2852/downloads#res-1)  
(Scottish Government, 2014).

Sierra Leone Extractive Industries Transparency Initiative, *Sierra Leone Beneficial Ownership Roadmap 2016-2020*  
<https://eiti.org/document/sierra-leone-beneficial-ownership-roadmap>  
(Sierra Leone Extractive Industries Transparency Initiative, 2016).

Transparency International, *G20 Leaders or Laggards? Reviewing G20 Promises On Ending Anonymous Companies*  
[www.transparency.org/whatwedo/publication/g20\\_leaders\\_or\\_laggards](http://www.transparency.org/whatwedo/publication/g20_leaders_or_laggards)  
(Berlin: Transparency International, 2017)

Transparency International, *Panama Papers anniversary – a year of change?*  
<https://transparency.eu/panama-papers-anniversary/>  
(Berlin: Transparency International 2017).

Transparency International, *Sao Paulo: Does Corruption Live Next Door?*  
[www.transparency.org/whatwedo/publication/sao\\_paulo\\_does\\_corruption\\_live\\_next\\_door](http://www.transparency.org/whatwedo/publication/sao_paulo_does_corruption_live_next_door)  
(Berlin: Transparency International, 2017).

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>  
(United Nations, 1966)

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*  
<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>  
(United Nations 1979)

United States Agency for International Development, *Country Profile: Property Rights and Resource Governance in Sierra Leone*  
[www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Sierra\\_Leone\\_Profile.pdf](http://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Sierra_Leone_Profile.pdf)  
(United States Agency for International Development 2010).

World Bank, *Sierra Leone: Land Governance Assessment Framework (LGAF) Draft Final Report*  
<http://documents.worldbank.org/curated/en/125631504857436914/Sierra-Leone-Land-governance-assessment-framework-draft-final-report>  
(Washington DC: World Bank, 2015).

[www.gov.scot/Publications/2017/09/7869](http://www.gov.scot/Publications/2017/09/7869)

[www.gov.scot/Publications/2018/04/2478/downloads](http://www.gov.scot/Publications/2018/04/2478/downloads)



Transparency International  
International Secretariat  
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200

Fax: +49 30 34 70 39 12

[ti@transparency.org](mailto:ti@transparency.org)

[www.transparency.org](http://www.transparency.org)

Blog: [voices.transparency.org](http://voices.transparency.org)

Facebook: [/transparencyinternational](https://www.facebook.com/transparencyinternational)

Twitter: [@anticorruption](https://twitter.com/anticorruption)